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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Serafin Natividad & Carolina Natividad,
Plaintiff(s),

vs.

New Penn Financial, LLC d/b/a Shellpoint
Mortgage Servicing,
Defendant(s).

Case: 2:15-cv-01829-GMN-NJK

**DEFENDANT'S REPLY IN SUPPORT
OF MOTION TO DISMISS PLAINTIFFS'
COMPLAINT**

I. INTRODUCTION

Plaintiffs Serafin Natividad and Carolina Natividad's ("Plaintiffs") Opposition to Defendant New Penn Financial, LLC dba Shellpoint Mortgage Servicing ("Defendant") Motion to Dismiss is simply a laundry list of legal conclusions and pleading standards. Entirely absent from the Opposition—and Complaint—are any factual allegations to support the two causes of action for quiet title and intentional misrepresentation alleged against Defendant. Accordingly, the Complaint should be dismissed.

II. LEGAL ARGUMENT

A. Plaintiffs Fail To State A Claim For Quiet Title

There is no dispute that an action for quiet title requires a plaintiff to discharge any debt owed. *Fuleihan v. Wells Fargo*, 2010 U.S. Dist. LEXIS 105287, *14-15 (D. Nev. Sept. 15, 2010) (citing N.R.S. 40.010). It is also undisputed that Plaintiffs obtained a loan on the Property, and have not alleged that they have paid back their loan. This fact alone defeats their claim. Moreover, Plaintiffs allege no facts to show why they are entitled to quiet title against any other

1 party with an interest in the Property. Accordingly, Plaintiffs' quiet title claim should be
2 dismissed.

3 **B. Plaintiffs Fail To State A Claim For Intentional Misrepresentation**

4 As with their quiet title claim, Plaintiffs' Opposition fails to specifically address their
5 intentional misrepresentation claim. And they do not dispute the elements of intentional
6 misrepresentation, nor do they deny that claims for fraud are subject to a heightened pleading
7 standard. *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097 (9th Cir. 2003) (quoting *Cooper v.*
8 *Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)); Fed. R. Civ. P. 9(b).

9 Here, Plaintiffs fail to allege a single misrepresentation made by Defendant, that they
10 relied on any such misrepresentation, or that they were injured by such reliance. Rather, Plaintiffs
11 simply parrot the elements for an intentional misrepresentation claim. While their Complaint
12 includes unclear allegations about robo-signing and a failure to comply with the Homeowner's
13 Bill of Rights, none of these disjointed allegations can support a claim for intentional
14 misrepresentation let alone the heightened pleading standard for such a claim. Accordingly,
15 Plaintiff's intentional misrepresentation claim should be dismissed.

16 **C. The Court Should Deny Plaintiffs' Request For A Preliminary Injunction**

17 Plaintiff's Opposition ignores their request for a preliminary injunction, and Plaintiffs
18 therefore concede that their request is without merit. As set forth in Defendant's Motion to
19 Dismiss, Plaintiffs are not likely to prevail on the merits of their case because they have not
20 alleged sufficient facts to state a cause of action to quiet title or for intentional misrepresentation.
21 Moreover, Plaintiffs have not alleged any irreparable harm. Notably, there are no allegations that
22 there is a pending sale date on the Property. Finally, there are no allegations or evidence that the
23 balance of equities tip in Plaintiffs' favor, or that injunctive relief is in the public interest.
24 Accordingly, Plaintiffs' request for a preliminary injunction should be denied.

25 Unable to respond to any of the legal arguments raised by Defendant, Plaintiffs' argue only
26 that the Motion to Dismiss should be denied simply because they have elected to proceed *pro se* in
27 this action. Plaintiffs are wrong. A *pro se* litigant is "not excused from knowing the most basic
28 pleading requirements" and is not excused from following court rules. *Am. Ass'n of Naturopathic*

1 *Physicians v. Hayhurst*, 227 F.3d 1104, 1107 (9th Cir. 2000). Furthermore, *pro se* complaints
 2 must still allege facts sufficient to allow a reviewing court to determine whether a claim has been
 3 stated. *See Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982); *see also*
 4 *Carney v. Kaufman*, 2015 U.S. Dist. LEXIS 28005, *4 (D. Nev. Mar. 6, 2015) (granting motion to
 5 dismiss complaint filed by *pro se* litigants). Plaintiffs have failed to meet even the most liberal
 6 pleading standards, and the Court should grant Defendant's Motion.

7 **III. CONCLUSION**

8 For the foregoing reasons, the Court should grant Defendant's Motion to Dismiss.

9 DATED this 17th day of December, 2015.

10 LEWIS ROCA ROTHGERBER LLP

11 By: /s/ J. Christopher Jorgensen

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16 **CERTIFICATE OF MAILING**

17 The undersigned certifies that a copy of the foregoing document was mailed, via US mail,
 18 postage prepaid, on the 17th day of December, 2015, to the following:

19 Serafin Natividad
 20 Carolina Natividad
 21 953 Plantain Lily Ave.
 22 Las Vegas, NV 89183
 23 Pro Se Plaintiffs

24 /s/ Sue Silcott

25 An employee of Lewis Roca Rothgerber LLP